



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
(PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-00XX)
TELEPHONE (916) 324-2642
FAX (916) 323-3387

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

CLAUDE PARRISH
Third District, Torrance

JOHN CHIANG
Fourth District, Los Angeles

KATHLEEN CONNELL
Controller, Sacramento

E. L. SORENSEN, JR.
Executive Director

February 11, 1999

William C. Greenwood
Assessor, County of Fresno
P.O. Box 1146
Room 201, Hall of Records
Fresno, California 93715-1146

Attn:

Assistant Assessor

Re: Replacement Property
Revenue and Taxation Code section 68 and Rule 462.5, subdivision (c)

Dear Mr. :

In your letter of October 7, 1998, you requested an opinion as to whether certain property was properly considered "replacement property" pursuant to Revenue and Taxation Code section 68 and Rule 462.5, subdivision (c).¹ A copy of that rule is enclosed for your convenience. For the reasons stated herein, it is our view that the property is not eligible replacement property.

You describe the displaced property as being comprised of a two-unit, 3,388 square foot medical building situated on a 7,510 square foot parcel and used for an owner-occupied medical office and a rented office. The amount received for the property in April, 1996, was \$316,000. There are two replacement buildings: a two-building medical property with 7,550 square feet on a 22,800 square foot parcel (replacement property (A)); and a single family residential Planned Unit situated on a 6,480 square foot parcel and used as a rental (replacement property (B)). Property A was acquired in July, 1998, for \$175,000, and Property B was acquired in September, 1998, for \$165,000. Your question relates to replacement property (B). The taxpayer requests relief under section 68 and argues that replacement property (B) is comparable to the displaced property since it is income producing and therefore, like-for-like.

Rule 462.5, subdivision (c) addresses comparability and requires that the replacement property shall be deemed comparable if it is similar in size, utility, and function. A replacement property must meet all three comparability criteria to be considered "comparable." If the replacement property does not meet the comparability tests, it is subject to reappraisal. (Rule 462.5, subdivision (c) (3).)

¹ All statutory references are to the Revenue and Taxation Code unless otherwise specified. References to rules are to Property Tax Rules set out in Title 18, California Code of Regulations.

Paragraph (1) under subdivision (c) states that property is similar in function if it is “subject to similar governmental restrictions as the condemned property, such as zoning.”

Based on prior staff interpretations of the comparability criteria set out in Rule 462.5, subdivision (c), replacement property (B) should not be regarded as replacement property if it has different zoning than the displaced property. It seems unlikely that zoning for a single family residential Planned Unit would be the same as zoning for a two-unit medical building used for a medical office and a rented office. If the zoning differs, the requirement of subdivision (c)(1) would not be met.

In this regard, it is important to note that in applying subdivision (c)(1), staff has looked primarily to the function of the property itself, not to the “function” to the owner, which in this case is “income producing property.” The application of the subdivision is dependent upon zoning, not rental of property for income. Had the Legislature and/or the Board intended rental of property for income to be sufficient for purposes of this requirement, either or both could have so provided.

Subdivision (c)(2) provides that size and utility of property are interrelated and associated with value. As the values of replacement Property A and replacement Property B appear to be within the value limits of section 68 and Rule 462.5, subdivision (c)(2)(B), we assume that value is not a critical factor in this inquiry.

Subdivision (c)(2) continues on to provide that property is similar in size and utility only to the extent that the replacement property is, or is intended to be, used in the same manner as the property taken. In our view, a replacement property used for a single family residential Planned Unit (single family residential) is not similar in utility to a two-unit medical office and rented office (commercial). See also the Examples following subdivision (c)(3). This situation is somewhat the reverse of the first Example:

EXAMPLE: A home is replaced by a combination dwelling and commercial property. Relief is applicable to only the dwelling portion of the replacement property; the commercial portion shall be considered as having changed ownership.

Here, a commercial property is replaced by a commercial property and a single family residential Planned Unit. Relief is applicable to only the commercial replacement property. The residential Planned Unit would be considered as having changed ownership.

We note further that there are other requirements to be met for eligibility for the exclusion. We do not comment on them herein as they were not part of your inquiry; however, we do call your attention to Rule 462.5 in its entirety and to section 68.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Janet Saunders

Janet Saunders
Tax Counsel

JS:jd

h:/property/precednt/emdomain/1999/02js.doc

Enclosure

cc: Mr. Richard Johnson, (MIC:63)
Mr. David Gau, (MIC:64)
Ms. Jennifer Willis, (MIC:70)